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A case of libel, a lesson in journalism

SITTING BACK in the press section of the ornate federal courtroom, an Israeli journalist turned to an American colleague and said, "I'm not so long at this business of journalism, but this trial is one of the best journalism schools." For months the reporter has watched lawyers for former Israeli Defense Minister Ariel Sharon and lawyers for Time Inc. claw at each other in a \$50 million libel suit brought against the weekly magazine.

Now, as the trial enters its final days and Time lawyers and spokesmen cloak themselves in sanctimony, this journalist, like many others who have covered the trial, is repelled by both sides. He knows that even if Time is found innocent of libel by a jury, it is guilty of journalistic felonies. Time reporters were sloppy and biased and hungered for a scoop, all the sins Time eloquently warned against in a Dec. 12, 1983, cover story, "Journalism Under Fire." Worst of all, the journalist knows that however unattractive Sharon may be, Time is guilty of journalism's capital offense: arrogance.

For much of the day Thursday, Time's chief lawyer, Thomas D. Barr, polluted the trial record with valid but extraneous argument. He said the press' job is often to make the powerful uncomfortable, because often it's a "way of life" for government to cover up the truth. He said the press could not function without confidential sources. He said Sharon was guilty, as an Israeli tribunal found, of "a grave mistake" in not taking steps to prevent a massacre of Arab civilians after Israel invaded Lebanon.

He turned to face the jury and told them it was their "duty" to "decide the facts." Then for the next five or so hours he skirted the central fact of this trial. At issue is one paragraph in a February 1983 Time story. The paragraph, which Sharon likened to a

"blood libel," refers to the Israeli tribunal's report on the massacre that occurred after Sharon invited armed Christian Phalangists to enter two Palestinian refugee camps soon after their leader was assassinated by Palestinians. The Time paragraph reads:

"One section of the report, known as Appendix B, was not published at all, mainly for security reasons. That section contains the names of several intelligence agents referred to elsewhere in the report. Time has learned that

it also contains further details about Sharon's visit to the Gemayel family on the day after Bashir Gemayel's assassination. Sharon reportedly told the Gemayels that the Israeli Army would be moving into West Beirut and that he expected the Christian forces to go into the Palestinian refugee camps. Sharon also reportedly discussed with the Gemayels the need for the Phalangists to take revenge for the assassination of Bashir, but the details of the conversation are not known."

Does Appendix B contain this incriminating evidence? After the judge finally persuaded the Israeli government to reveal this secret document, Barr conceded on behalf of Time that "the information we said was in Appendix B is not there." But Time treats this devastating admission as if it were irrelevant. "If these subjects [revenge] were not discussed [between Sharon and the Gemayels], why not?" Barr asked the jury. He made it clear that even though Time could not prove they spoke of revenge, he believed they did. If it wasn't in Appendix B, the evidence must be elsewhere. In other words, the attorney for one of journalism's great institutions advances the proposition that the next time an editor asks a

reporter to cite his sources or prove a story, the reporter need only respond, "I know it is true because I think it is true." Around the courthouse, reporters refer to this as "doing a Halevy," in honor of Time's reporter, David Halevy.

During a brief recess Thursday evening, Sharon's attorney, Milton S. Gould, stood in the hallway and referred to Barr's summation this way: "It's a venture into fairyland. He's not describing what happened. He's describing what he'd like to have happened."

More damaging for Time's case, this also appears to be the view of the presiding judge in the trial. In turning down Time's request to dismiss the libel suit without a trial, Judge Abraham D. Sofaer last November issued a lucid 100-page opinion as to why this case should be adjudicated. In it he wrote: "To resolve the issues in this litigation regarding the secret appendix, the jury need only make a factual determination as to whether Appendix B contains the alleged details of the condolence call reported in the Time article. The jury is not called upon to determine, and need

not pass upon, the validity or even the propriety of the commission's findings and report."

Sadly, it falls to Ariel Sharon to instruct Time on what it should have done. "retract and apologize." Then, if Sharon persisted in his libel action, Time could predicate its defense on the sound proposition that it is not guilty of malice — which is a test for libel — simply because it made a factual mistake. We often make inadvertent mistakes in journalism, Time could have said, and unlike many of those we cover, we openly admit it. Instead of a humility defense, Time has hunkered

down. It has refused to print a retraction. It has arrogated to itself the task of besmirching Sharon's name that has already been accomplished by an Israeli tribunal. It has pretended that its journalism is nearly infallible, and that its reporter, David Halevy, is John Peter Zenger rather than a sloppy journalist who was once placed on probation by Time and who has committed numerous errors in this case.

All the words and legal documents in this trial narrow down to two simple questions. First, can Time substantiate that single paragraph? Second, can Sharon prove malice? If the answer to both is no, as I think it is, what then is this trial about? The simple answer, I think, is: vanity and arrogance.

Time is too vain, and arrogant, to admit error. And Sharon is seeking vindication from an American jury for the ignominy he has properly suffered at the hands of a different kind of Israeli jury. With Time's help, he is succeeding.

FOR TIME, there are two juries in the courtroom. When its case goes to the legal jury this week, it may be found innocent of the narrowly interpreted crime of libel. I hope it is. But among a jury of their journalistic peers, I sense it is already judged guilty. It got its facts wrong, and won't admit it.

And, as noted by Steven Brill in a tough-minded critique of Time in the January issue of *The American Lawyer*, Time has weakened the case of those journalists "who think the First Amendment ought to be more than a license for arrogance" and undermined those "who are constantly defending our profession against charges that journalists are lazy scandalmongers who never admit mistakes." Those are the journalistic lessons being taught in that courtroom.